(2016) 08 BOM CK 0086

In the Bombay High Court

Case No : Criminal Writ Petition No. 742 of 2015

M/s. Aditya Developers APPELLANT

Vs

Manish Ranganath Thorat RESPONDENT

Date of Decision : 16-08-2016

Acts Referred:
Consumer Protection Act, 1986 — Section 27

Citation : (2017) ALLMRCri 1551 : (2016) 4 BomCR(Cri) 52 : (2017) 1 CPR 34 : (2016) 5 MhLJ 941 : (2016) 5 MhLJCrl 390

Hon'ble Judges : S.B. Shukre, J.

Bench : Single Bench

Advocate : Shri C.B. Dharmadhikari, Advocate, for the Petitioner; Mrs. S.K. Paunikar, Advocate, for the Respondent

Final Decision : Allowed

Judgement

S.B. Shukre, J.(Oral)—Heard. Rule. Rule made returnable forthwith.

2. Heard finally with consent of the learned Counsel for the parties.

3. By this writ petition, the petitioner, who was the judgment debtor before the Consumer Forum, has challenged the legality and correctness of the order passed by the Consumer Forum on 19-08-2014, thereby rejecting an application filed by the petitioner for dismissing the application filed under Section 27 of the Consumer Protection Act, 1986 by the respondent, the grounds of which were that no penalty could be imposed upon the petitioner, the decree dated 17-01-2007 had been rendered inexecutable and that cognizance of the offence could not be taken, as the application for imposition of the penalty was filed after the expiry of the limitation period.

4. It is seen from the impugned order that even though two specific grounds were taken for challenging the action of the Consumer Forum in taking cognizance of the application filed under Section 27 of the Consumer Protection Act, the Consumer Forum considered only one ground of objection pertaining to

the bar of limitation and found that the application was within the limitation. It also recorded a finding that Section 468 of the Code of Criminal Procedure was not applicable to the proceedings before the Consumer Forum. However, the learned Members of the Consumer Forum ignored the other ground of objection, a significant one, which related to making out no offence in the instant case. In the normal course, I would have preferred to remand this matter to the Consumer Forum for deciding afresh the said objection, but considering the admitted facts, I am of the view that such an exercise would only delay, what is inevitable in this case. Accordingly, I have considered the said objection while hearing this writ petition.

5. The decree has been passed on 17-01-2007 and it lays down certain conditions. It directs the petitioner to execute a sale-deed of Flat No.303 in favour of the respondent, and give its possession to the respondent upon the respondent paying balance consideration of the flat. It further lays down that the directions given in the decree be complied with within thirty days from the date of the judgment and decree. It is the contention of the learned Counsel for the respondent that there is no direction given in the decree that the respondent first deposited the balance consideration in the Consumer Forum and then the sale-deed executed. According to her, as per the decree, the balance consideration was to be paid by the respondent simultaneously when the sale-deed was to be executed in favour of the respondent by the petitioner. This could be one of the interpretations of the directions given in the decree. But the question is, how the petitioner-judgment debtor would come to know that the respondent is ready with money and willing to pay the same before he takes the final step towards execution of the sale-deed and the answer could be found in the manner in which the respondent conducts himself. If his conduct is such as to assure the judgment debtor that he would certainly be paid balance consideration when he would go to the office of the Sub-Registrar, the blame of non-compliance with the decree could be placed on the petitioner or the judgment debtor. For this purpose, some evidence would have to be placed on record, as for example, some documents pointing out intention of the decree holder. But, there are no documents placed on record. Admittedly, there is no document available by which such readiness and willingness on the part of the respondent is seen to be manifested and made known to the petitioner, within the given time. Of course, there was one notice issued in January, 2008, but that was after the expiry of stipulated time. If that was so, it could not have been expected from the petitioner to go to the office of the Sub-Registrar on his own and execute a sale-deed in favour of the respondent even without being sure of the respondent paying the balance consideration at that time.

6. As the sale-deed was not executed within 30 days from the date of the decree, nor the amount of balance consideration was paid within that period of time, the decree was rendered in executable. No application for seeking extension of time by either of the parties was made before the Consumer Forum. It was only on 09-07-2008 that upon an application filed by the respondent, permission was

granted to the respondent to deposit the amount of balance consideration in the Consumer Forum. However, even at that time, admittedly no extension of time was granted by the Consumer Forum. Grant of such extension of time by the Consumer Forum was absolutely essential in view of the law laid down by the Hon''ble Apex Court in the case of P.R. Yelumalai v. N.M. Ravi, reported in 2016 (2) Mh.L.J. 483. In this judgment, the Hon''ble Apex Court has observed that deposit of balance amount on next day of stipulated time without obtaining extension of time from Court is inconsequential. This is exactly what has happened in the present case and, therefore, grant of permission to deposit the amount of balance consideration in the Court on 09-07-2008 by the respondent without obtaining extension of time stipulated in the decree would be of no consequence.

7. The facts stated earlier would clearly show that the decree dated 17-01-2007 had been rendered inexecutable in the instant case. As a matter of record, I must say, in the earlier round of litigation being Writ Petition No.4004/2012, this Court while dismissing the writ petition filed by the present petitioner against the respondent by the order dated 17-12-2012 observed that the order dated 17-01-2007 was so clear as to obviate the need for seeking an additional order of rescinding the decree dated 17-01-2007. These observations clearly implied that the decree dated 17-01-2007 after the expiry of period of 30 days from the date of the decree had been rendered inexecutable. Precisely, that was the reason why it was observed that there was no need for the petitioner to seek any order for recalling or rescinding the order or decree dated 17-01-2007 on account of non-payment of the balance consideration amount within the stipulated time by the respondent.

8. Once it is found that the decree dated 17-01-2007 had been rendered inexecutable, the only conclusion that is possible would be that no offence is constituted, there being no obligation remaining on the part of the petitioner to be discharged under the law. The learned Members of the Consumer Forum have not considered this fundamental aspect of the whole matter and the result is of passing of an illegal and arbitrary order. The order impugned in this petition cannot be sustained in law. It must go and so the proceedings initiated under the provisions of Section 27 of the Consumer Protection Act.

9. The writ petition is allowed. The impugned order is hereby quashed and set aside. The proceedings initiated under Section 27 of the Consumer Protection Act are hereby quashed and set aside.

10. Rule is made absolute in these terms with no order as to costs.

